



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,769	09/17/2003	Kenneth Wayne Mallory	MALL-001	9418

28661 7590 09/02/2004  
SIERRA PATENT GROUP, LTD.  
P O BOX 6149  
STATELINE, NV 89449

EXAMINER
----------

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/666,769

Applicant(s)

MALLORY, KENNETH WAYNE

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-20 is/are pending in the application.  
4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11-18 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of species combination II-B in the reply filed on 16 August 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1-10 and 21-27 have been cancelled by Applicant. Claims 19 and 20 are withdrawn from prosecution because they are drawn to nonelected species C (or D) and E, respectively.

### ***Claim Objections***

Claim 15 is objected to because of the following informality:

In claim 15, lines 1-2, "said coupling member" should be --said at least one coupling member-- to conform with previous claim language.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 11-14 are rejected under 35 U.S.C. §102(b) as being anticipated by Lindhal (US 5,442,877).

Art Unit: 3643

As to Claim 11, Lindhal discloses a landscape edging system (Figs. 1-9) comprising a first edging component (10 of Fig. 2A) having a body including a base (20 of Fig. 2A), the base with first and second ends (shown in Fig. 1) and upper and lower surfaces (shown in Figs. 1 and 2A), a form (12, 14, 16, 26 of Fig. 2A) disposed on the upper surface of the base wherein the lower surface is configured to contact a ground feature (ground), wherein the form includes at least one conduit (region bounded by 12, 14, 16 of Fig. 2A) disposed in the form; and, at least one coupling member (42 of Fig. 2A) configured to demountably couple with the first edging component proximate first end (Shown in Fig. 2B), the at least one coupling member including a body (62, 48, 50, 56 and 54 of Fig. 2A) having a side wall (48 and 50 of Fig. 2A) mounted on a coupling base (62 of Fig. 2A), a mating portion (56 and 54 of Fig. 2A) disposed in the side wall and configured to couple with the first edging component, the coupling base configured to anchor to said ground feature (in that coupling base will touch ground).

As to Claim 12, Lindhal further discloses a second coupling member configured for second edging component (inherent in Fig. 1A).

As to Claim 13, Lindhal further discloses the at least one conduit configured to contain an electrical conductor (col. 5 lines 8-12).

As to Claim 14, Lindhal further discloses the base and form include a receiver (26 and 28 of Fig. 2A) to receive at least one coupling member.

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3643

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lindhal (US 5,442,877) in view of Kendrick (US 4,945,675).

As to Claims 15 and 16, the limitations of Claim 11 are disclosed as described above. Not disclosed is the at least one coupling member configured to promote a sealed union with an O-ring. Kendrick, however, discloses a coupling member (30 of Fig. 4) with an O-ring (31 of Fig. 4) that promotes a sealed union that is fluid tight. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging system of Lindhal by using a coupling member configured to promote a sealed union with O-rings as disclosed by Kendrick so as to promote water use efficiency and reduce waste.

As to Claim 17, the limitations of Claim 11 are disclosed as described above. Not disclosed is the edging with fluid and electrical conduits. Kendrick, however, discloses an edging system with both fluid and electrical conduits (17 and 22 of Figs. 3-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging system of Lindhal having both by fluid and electrical conduits so as to increase the versatility of the edging.

As to Claim 18, the limitations of Claim 11 are disclosed as described above. Not disclosed is the body with a light mount with either internal or external fixture. Kendrick, however, discloses an edging with a light mount (region around 16 of Fig. 3) with either internal or external fixture. It would have been obvious to one of ordinary skill in the art at the time of

Art Unit: 3643

the invention to modify the edging system of Lindhal by having a light mount with either internal or external fixture as disclosed by Kendrick so as to allow a path to be lighted.

### *Conclusion*

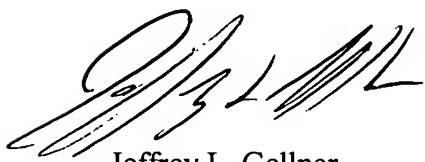
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matz and Boyer disclose in the prior art various edgings with liquid and electrical conduits. Reum et al. disclose in the prior art a coupling with O-rings.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner

Primary Examiner